KHOO SEE MOI v. TAY TEIK CHANG

[O.C.J. (Syed Agil Barakbah J.) June 18, 1970]

[Seremban — Civil Suit No. 113 of 1968]

Negligence — Injuries sustained in motor accident — Damages — Injuries to brain causing 50% deficiency — Elements to be considered in assessing general damages.

Damages — Head — Concussion — Injuries to brain causing 50% deficiency — Jaw fracture.

The plaintiff sustained injuries in a motor accident. Liability for negligence was admitted by the defendant. The plaintiff received serious injuries to his brain which had caused a 50% deficiency, rendering him unable to do a number of things that a normal man could do, including difficulty in speech and in chewing food, he also suffered from a partial loss of taste, headaches, poor memory, lack of concentration and loss of his former personality. He had also suffered pain and permanent injuries. He was a University graduate but with the unfortunate accident that befell him, not only had he lost the opportunity of improving his earning power as an executive, but it also affected his personality rendering him fit only perhaps to perform the work of an ordinary clerk.

Held: in the circumstances the general damages to be awarded to the plaintiff should be $41,384 made up of $3,000 for pain and suffering, $15,384 for loss of future earnings, $15,000 for brain injury and the effects thereof, $5,000 for fracture of the mandible and the effects thereof and $3,000 for facial injuries.

Cases referred to:-

(1) *Sum Kum* v. *Devaki & Anor.* [1964] M.L.J. 74, 75.

(2) *Bonham-Carter* v. *Hyde Park Hotel Ltd.* (1948) 64 T.L.R. 177, 178.

(3) *Clarapede* v. *Commercial Union Association* (1832) 32 W.R. 262.

(4) *Low Ah Tow* v. *Yusof bin Kayab* [1954] M.L.J. 112.

(5) *Low Kwee Swee* v. *Chu Teck Tong & Anor.* [1962] M.L.J. lxxxiii.

(6) *Tan Chwee Lian* v. *Lee Ban Soon* [1963] M.L.J. 149.

(7) *Re Farida binte Shariffuddin* [1964] M.L.J. xlvi.

(8) *Tan Kheng Kuan* v. *Lim Cheng Teik* [1965] 1 M.L.J. 116.

(9) *Mohamed bin Ahmad Suleimanie* v. *Gim Guan Co. Ltd.* [1966] 1 M.L.J. xxxiv.

(10) *Alaggappan* v. *Government of Republic of Singapore* [1967] 1 M.L.J. xl.

(11) *Poh San Keng* v. *Poh Bar Chian* [1968] 1 M.L.J. xxi.

(12) *Kong Chaw* v. *Dhan Singh* [1966] 2 M.L.J. xx.

(13) *Saniah & Ors.* v. *Abdul Hamid & Ors.* [1967] 2 M.L.J. 255.

CIVIL SUIT.

Dato' Balwant Singh (*S. Ponniah* with him) for the plaintiff.

Wong Seng Chow for the defendant.

Cur. Adv. Vult.

Syed Agil Barakbah J.: This is a claim for damages by the plaintiff for the injuries sustained by him in a motor accident which occurred on or about 18th September, 1966, at about 1.30 p.m. at the 13th milestone, Seremban/Mantin road. The plaintiff was a passenger in a motor car No. NA. 6709 which was travelling from Kuala Lumpur to Seremban. On reaching the 13th milestone the car in which he was travelling was knocked down by another motor car No. SL. 9576 which was driven by the defendant from the opposite direction. The defendant in his pleadings admitted liability for negligence and the issue left was therefore the quantum of damages.

The plaintiff is a graduate of Nanyang University, Singapore, having obtained a B.A. degree in economics. At the time of the incident he was employed as a junior partner in the firm of Wah Soon & Co., Port Swettenham, at a monthly salary of $250. He was also entitled to 20% profits at the end of each year as a junior partner. In order to be a junior partner he bought twenty percent shares for $4,000 for which he had paid half as evidenced by Exhibits P2 and P3 produced. After the accident the company refused to take him as a partner and refunded the $2,000 which he had paid.

On admission to the General Hospital, Seremban, the same day after the accident, according to the report referred to by Dr. M. Balasegaram (P.W. 3), the plaintiff's condition was very serious and he was gasping. Tracheotomy was applied to pump oxygen into his lungs. He was unconscious and semi-conscious for a period of about four weeks. He had severe concussion on the head and had the following injuries: —

(1) Lacerated wound on the scalp across the sagittal region running from the upper part of the forehead to the middle.

(2) Irregular lacerated wound over left frontal region just above the eyebrow.

(3) Irregular lacerated wound over the right cheek, nose, left cheek, mouth and nostrils.

(4) One inch lacerated wound over the chin.

(5) Irregular lacerated wound over the left side of the neck.

(6) There was a fracture of the mandible *i.e.* the lower jaw, between the second and third teeth with displacement. He was referred to the dental surgery. This fracture was reduced and immobilised with silver cap-splints. In all, twelve teeth were extracted because they were either broken or the gums were bruised. As a result of the fracture of his mandible and the loss of teeth, his mastication was impaired.

The plaintiff was again examined by Dr. Balasegaram on 5th August, 1968, and scars on the first five injuries mentioned above were noted. In his opinion, these scars were likely to remain permanent and foreign bodies were still present in the scar on the neck. The twelve teeth lost had been replaced by dentures. According to the doctor, occlusion of the teeth was not fully possible because of the fracture of the mandible. Though the fracture was healed, the displacement was such that the upper and lower teeth could not meet fully when closed. The plaintiff complained of heaviness in the head, headache, inability to concentrate for a long time, inability to eat hard food and difficulty in speaking fluently. In the doctor's opinion, the complaints as to the difficulty in chewing and speaking fluently were genuine because of the fracture of the mandible with failure of proper alignment of the teeth. With regard to the other complaints, he was of the view that they might be due to post-concussional symptoms as he had evidence of concussion. At this juncture, I should mention that

during the time when the plaintiff was giving evidence in the witness box, I noted that during the whole period he had difficulty in speaking fluently. Not only was he slow in speaking but he had to be asked to repeat what he said. The doctor further stated that the past history of being unconscious for about a month and the fact that the patient was gasping on admission showed that he had permanent brain damage since these symptoms were consistent with brain injury. Because of this he would not be able to perform work with efficiency as before the accident. He estimated the efficiency to be less by about fifty per cent. The plaintiff would not therefore be able to perform his duties as an executive but might be able to do simple clerical work.

The plaintiff was also examined on two occasions, namely, 24th November, 1969, and 6th January, 1970, by Dr. Edward Tan, an expert in psychological medicine, attached to the General Hospital, Penang. (P.W. 4). According to P.W. 4, the patient complained of headache, inability to concentrate, poor memory, insomnia and irritability. These symptoms were continuous and persistent and not relieved by medication. The doctor performed psychological tests of memory functions, namely, the Badcock's sentence, five minute recall test and test of digit span. The patient did poorly on all the three tests. He was unable to repeat a sentence after hearing it three times as any other normal person could. Of the seventeen items given to him to remember, he was able to recall only six of them when tested five minutes after. Normally, one would expect a recall of 12 to 17. In the third test he was able to repeat only five digits forward and three digits backwards as compared with a normal performance of seven forward and five backwards. He was also unable to recall any headline in the newspapers he read in the morning. There was also a mild degree of aphasia present since the patient was unable to give the correct names of certain objects.

The doctor also examined the plaintiff's nervous system and found a weakness in the third, seventh and twelfth cranial nerves. These are nerves issuing from the brain on the left side. As a result of this, the doctor also found that the patient had impaired ability to taste over the left half of the tongue. It was observed throughout the examination that he was anxious and irritable especially when he failed to do some of the tests. The doctor came to the conclusion that the patient was suffering from post-traumatic syndrome with a moderate degree of associated brain damage of about 50%. This brain damage in his opinion was likely to be permanent but likely to remain stagnant unless he got injured again. In cross-examination the doctor stated that the plaintiff had not improved as he had observed him while giving evidence in court and he found that he was the same as when he examined him before.

The other witness was a school mate of the plaintiff, Phua Chang Chee (P.W. 2), also a graduate of Nanyang University together with the plaintiff and a lecturer in the Tunku Abdul Rahman College, Kuala Lumpur. He described the plaintiff as a student of above average intelligence while in school. Thereafter, they were in the University together although in different academic streams. Before the accident, he said the plaintiff was a person of firm character and a very able man of high calibre, capable of doing executive work. His memory was extremely good. After the accident he found him to be uncertain, unsteady and not consistent in his thinking. His memory was poor. Sometime last year the witness recommended the plaintiff for a job in the Federal Paint Factory. After working for a few months he was dismissed and on inquiry the witness learnt that the plaintiff was unable to cope with the work because of his poor memory and very unsteady condition. As regards this employment the plaintiff produced a letter from the managing director of Federal Paint Factory Sdn. Berhad, dated 3rd May, 1969. (Ex. P4). He was offered the job of a senior clerk on a salary of $250 per month and a monthly allowance of $50 and he was to remain on probation for a period of six months. According to the plaintiff, he was dismissed after working for about two months.

Considering the above, I am of the opinion that the plaintiff has received serious injuries especially to the brain which has reduced him to fifty percent deficiency, apart from inability to do a number of things that a normal man can, such as difficulty in speech and in chewing food, partial loss of taste, headache, poor memory, lack of concentration and loss of his former personality. He has also suffered pain and permanent injuries. He has spent a number of years in educating himself up to university level and has, according to him, received an offer of an assistant lectureship from a university overseas but could not accept it because of lack of finance. With this unfortunate incident that has befallen him, not only has he lost the opportunity of improving his earning capacity as an executive, but it has also affected his personality rendering him fit only perhaps to perform the work of an ordinary clerk. He has tried many times to get employment after being incapaciated but was not successful. The only employment that he obtained as a senior clerk did not last long as it ended in his dismissal only after two months. In my view, considering all the facts and circumstances, the plaintiff has suffered a great deal and the damages that should be assessed in his favour should therefore be a sum commensurate with such injuries, loss and suffering. This sum should be fair and reasonable.

Now, with regard to his income earned before the accident, the plaintiff relied only on his own evidence without calling other witnesses, *e.g.* the past employer, or producing any documents to substantiate his claim on the matter. Although this had not been challenged in cross-examination, I would like to reiterate the observation made by Thomson L.P. in *Sum Kum* v. *Devaki Nair & Anor.*,[1] when hearing an appeal in the Federal Court. His Lordship stated as follows: —

"...This is by no means the first appeal this Court and its predecessor have had to deal with in which somewhat insufficient attention has been given at the trial to the question of giving adequate evidence on the question of quantum of damages. It is for counsel in such cases to devote a little more attention to that aspect of the matter in future. As Lord Goddard said in the case of *Bonham-Carter* v. *Hyde Park Hotel Ltd.*[2]: —

'Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the Court, saying: 'This is what I have lost; I ask you to give me these damages'. They have to prove it.' "

From these, it is not sufficient for the plaintiff to come to the witness box and say that he received so much salary a month without calling evidence to support it. I cannot see any difficulty for such supporting evidence to be obtained. However, from the evidence available, including the purchase of 20% shares of which the plaintiff has proved to have paid half the amount, I estimate the monthly salary of the plaintiff as $200 which I think is fair and reasonable, instead of $250.

Special damages:

Under this head, in the first item of the particulars in the pleadings, the plaintiff claims $3,000 for loss of wages from June 18, 1966 to June 18, 1967 at $250 per month. At the close of the case during the reply, the plaintiff's counsel in his address applied for amendment to insert the words "and still continuing". By this addition the figure claimed would be increased to $9,000 less the amount received by the plaintiff during the two months' employment as a senior clerk in the Federal Paint Factory, Kuala Lumpur. The application was objected to by counsel for the defendant on the ground that it was made at the very last moment resulting in injustice to his client. The court has a discretion in allowing an amendment at any stage of the proceedings but is reluctant to entertain any application made at the last moment where there has been undue delay and where such amendment will injure or affect the vested rights of the opponent.

However, in *Clarapede* v. *Commercial Union Association*,[3] Brett M.R. said: —

"However negligent or careless might have been the first omission and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs: but if the amendment will put them in such a position that they may be injured it ought not to be made."

Having regard to the facts and circumstances of this case, I am satisfied that the plaintiff has suffered continuous loss up to the date of the hearing. In normal cases this is usually pleaded. There is no want of *bona fides* or any attempt to obviate the issues which will injure or affect any vested rights of the defendant. I therefore allow the amendment to be made and order that the plaintiff pay the costs of such amendment.

As regards special damages, I assess the amount of $8,450 as being fair and reasonable. This figure is made up as follows: —

(1)	Loss of wages at $200 per month for the period of 42 months less $600 for two months' salary including allowance.	$7,800.00
(2)	For the other items enumerated in the particulars.	650.00
	Total:	$8,450.00

With regard to general damages, the principles of assessment are explained by Murray-Aynsley C.J. in *Low Ah Tow* v. *Yusof bin Kayab*[4] in the Court of Appeal, as follows: —

"There are three elements to be considered in assessing general damages: (a) pain and suffering; (b) loss of future earnings; (c) the disadvantages arising from disablement apart from loss of earning power. While element (b) is related to probable earnings of the injured person, elements (a) and (c) are not so related and are the same regardless of his financial position...."

Pain and suffering:

For pain and suffering I consider that the plaintiff was gasping at the time of admission and was in a critical condition. Tracheotomy had to be applied to save his life and he was conscious and semi-conscious for a period of four weeks. He had undergone two operations and foreign bodies were still present in the prominent and ugly scar on his neck. In the case of *Low Kwee Swee* v. *Chu Teck Tong & Anor.*,[5] Ismail Khan J. (as he then was) awarded $2,000 for pain and suffering to a 42 year-old lorry driver who sustained personal injuries which were less extensive than those suffered by the plaintiff in this case.

In the present case, therefore, I am of the opinion that $3,000 is fair and reasonable in all the circumstances for the award under the head of pain and suffering.

Loss of future earnings:

Though this has not been pleaded, I consider the principle in the case of *Low Ah Tow* stated above as binding that in a case of this nature this element can be assessed. In passing, I would say that it is in keeping with good practice that it should be properly pleaded.

The evidence indicates that the plaintiff is not totally incapacitated by the injuries sustained and both medical opinions state that he is still able to perform simple work as an ordinary clerk. I consider that there is a possibility, though not a certainty, that he will be able to obtain a job as a clerk. The plaintiff is 31 years old and I think in the normal circumstances he will be able to work until the age of 55. This leaves 24 years in his favour and deducting 3 years for other contingencies and incidents of life that leaves 21 years' purchase. At $200 monthly salary for 21 years the figure comes to $30,768. As there is a possibility that he would obtain a job as a clerk in the near or distant future, I would reduce this figure by half and this will leave the sum of $15,384 as a fair and reasonable amount for loss of future earnings.

Other disadvantages arising from disablement, including loss of amenities.

Under the third head, I first consider the brain injury suffered by the plaintiff resulting from the accident which has been dealt with earlier by the evidence of Dr. Balasegaram and Dr. Edward Tan together with loss of amenities arising from this injury. The effect of this injury, which was likely to be permanent, resulted in the reduction to about fifty per cent deficiency in the ability to perform his work, apart from the post-traumatic syndromes which changed his personality to that of an undecided and unsteady person and an inefficient worker not compatible with his high qualifications. They are as follows: —

(a) constant headaches;
(b) inability to concentrate;
(c) poor memory;
(d) insomnia;
(e) irritability;
(f) weakness in third, seventh and twelfth cranial nervous system; and
(g) impaired ability to taste over the left half of the tongue.

(1) In the case of *Tan Chwee Lian* v. *Lee Ban Soon*,[6] the Court of Appeal in Singapore increased the award to $60,000 in favour of the appellant, a nine-year old girl, who suffered a severe brain injury as a result of being struck down by a lorry at a pedestrian crossing. Before the accident she was a perfectly normal child full of life but the accident changed totally her character because apart from being moody, irritable and subject to fits of temper, she became mentally retarded and a spastic. She had to leave school. Her condition was unlikely to improve and she required constant supervision.

(2) In *Farida bte. Shariffuddin*,[7] Ismail Khan J. (as he then was) awarded a sum of $50,000 to a seven-year-old school girl who, apart from having a fracture of the left parietal bone, was found after twenty days of hospitalisation to have a severe brain damage the effect of which resulted in the occurrence of a generalized epileptic fit, temporary loss of speech and a noticeable subsequent change in her personality. A test based on the Vineland Social Maturity Scale showed that she had the mentality of a two and half year-old child. She was classified as sub-normal and incapable of living her life independently of aid and attention. The injury to the brain was likely to be permanent and she would be incapable of earning anything for herself and would need full-time care and attention.

(3) In the case of *Tan Kheng Kuan* v. *Lim Cheng Teik*,[8] Hepworth J. awarded $37,600 as general damages, *i.e.* $12,600 for loss of earnings and $25,000 for loss of amenitties to the plaintiff, a 56 year-old trishaw rider who as a result of an accident between his trishaw and a motorcycle driven by the second defendant, sustained injuries *i.e.* a fracture of the parietal bone on the right, damage to the middle meningeal artery and laceration of the dura mater and brain tissue. The effect of the accident was that he could not concentrate on what he was doing and was found to be of unsound mind and incapable of managing himself and his affairs.

In the present case, in the light of the circumstances pointed out above, I assess a sum of $15,000 as a fair and reasonable amount for the brain injury, including the effects arising therefrom.

The plaintiff also sustained a fracture of the mandible which resulted in the loss of twelve teeth. The effect of this together with improper alignment of the teeth due to the fracture impaired his mastication, *i.e.* difficulty to speak fluently. The last defect was noticeable when he gave evidence in court.

(1) In *Mohamed bin Ahmad Suleimanie* v. *Gim Guan Co. Ltd.*,[9] Buttrose J. (Singapore) awarded to the plaintiff, a 22 year-old male odd job labourer, a sum of $10,000 in general damages for injuries sustained in an accident which included $7,000 for a fractured jaw. The plaintiff had a clicking noise when he opened and shut his mouth which was due to the dislocation of the mandibular cartilege which interfered with mastication and arthritis was likely to develop.

(2) In *Alagappan s/o Muthuraman* v. *The Government of the Republic of Singapore*,[10] Chua, J. awarded to the plaintiff, a 30 year-old male Indian and a newspaper vendor, the sum of $7,000 for cerebral concussion, fracture of the mandible which had no residual disability and which was treated by the dental surgeon with wire fixation.

(3) In *Poh San Keng* v. *Poh Bar Chian*,[11] Kulasekaram, J. (Singapore) assessed a sum of $14,000 in general damages to a 19 year-old male who suffered from a lacerated wound from the mid-line of the pallet to the upper right first molar, had a fracture of the right angle of the lower jaw, lost ten teeth and a fracture of the alveolar bone and comminuted fracture of the mandible between the lower right and left canines. He could only take liquid food during the period of two and a half months when the jaws had to be wired together and there was slight numbness over the right side of the lower jaw. He could not wear dentures.

In the circumstances of the present case, I assess the sum of $5,000 as a fair amount for this injury.

The plaintiff also sustained bodily injuries which on examination by Dr. Balasegaram on 5th August, 1968, showed five permanent scars on the scalp, left side of the neck, left side of the cheek, left eyebrow and over the upper lip. Of these the second injury was the most serious and prominent because of multiple scarring with possible foreign bodies present. A comparable case is *Kong Chaw* v. *Dhan Singh*,[12] where Raja Azlan Shah, J. awarded a sum of $3,500 for facial disfigurement. In the present case, I would assess the sum of $3,000 as being fair and adequate.

Loss of marriage prospects:

I think under this head past comparable cases cited deal mostly with females who would be deprived of their prospects of marriage due to facial and other injuries sustained. Thus in *Saniah & Ors.* v. *Abdul Hamid & Ors.*,[13] MacIntyre J. awarded general damages assessed at $20,000, $15,000 and $18,500 respectively to the three female plaintiffs.

No authority has been cited as regards loss of marriage prospects in the case of a male plaintiff. There are numerous instances where damages under the head of loss of amenities have been awarded for loss of consortium due to the injuries suffered by the wife and for impotency which is the outcome of injuries sustained by the plaintiff himself due to the negligence of the defendant.

In the present case, the plaintiff stated that he planned to marry by the age of 35 after he had furthered his education. He had no particular fiancee or girl friend and was more anxious of improving his career. Although there may be a prospective loss of

his marriage due to the injuries and change of character, I do not in the circumstances regard it as something calling for a specific award.

The total sum of my award for the plaintiff under the quantum of damages amounting to $49,834.00 is made up as follows: —

1.	Special damages: - - - -		$8,450.00
2.	General damages:		
	(a) For pain and suffering.	$ 3,000.00	
	(b) Loss of future earnings.	15,384.00	
	(c) Brain injury including the effects thereof.	15,000.00	
	(d) Fracture of the mandible including the effects thereof.	5,000.00	
	(e) Facial injuries.	3,000.00	41,384.00
	Total:		$49,834.00

3. Costs of suit less $200, the cost to be paid by the plaintiff for the amendment of the statement of claim.

Order accordingly.

Solicitors: *Dato' Balwant Singh & Co.; Shearn, Delamore & Co.*

CHAN KOK KIANG v. TAN SWAN CHENG & ANOR.

[C.A. (Wee Chong Jin C.J., Tan Ah Tah and Kulasekaram JJ.) July 6, 1970]

[Singapore — Civil Appeal No. 21 of 1969]

Negligence — Lorry overtaking cyclist — Duty on driver of lorry.

Practice and Procedure — Amendment of appeal records — Practice to be followed.

This was an appeal against the decision of the High Court in an action for damages on behalf of the estate and for the dependants of a deceased cyclist, who was knocked down by a lorry and sustained injuries which resulted in his death. At the hearing of the appeal counsel for the appellant moved for an order that the appellant be at liberty to amend the record of appeal by adding a note taken by counsel at the hearing of the action in the notes of evidence. The note which purported to be a record of what was said by the trial judge, had been taken by counsel at the hearing but neither the trial judge nor the counsel for the respondents/plaintiffs at the trial was able to remember what was said. The application was dismissed. It was argued on the appeal that the learned trial judge was wrong in coming to the conclusion that the appellant/defendant was negligent in failing to observe the presence of the cyclist on the road or if he did in failing to give the cyclist a sufficiently wide berth so that the appellant/defendant's negligence was the cause of the injuries suffered by the cyclist. It was further submitted that the trial judge was not entitled to draw the inference that the driver of an overtaking vehicle is negligent solely and simply from the fact that the overtaking vehicle collided with the overtaken vehicle.

Held, dismissing the appeal: while it is true that no inference of fact or law adverse to the driver of an overtaking vehicle could be drawn solely and simply from a collision between the overtaken and overtaking vehicles, there was in this case ample evidence, which was not disputed, for the trial judge to draw the inference that the appellant failed to give the cyclist a sufficiently wide berth and therefore the learned trial judge was correct in finding that he was negligent.

On the motion to amend the appeal record the court said:- "If it is intended that any note taken by counsel at the trial of an action be accepted as part of the notes of evidence for use by an appellate court, it is desirable that the trial judge and counsel for the other party or parties should be supplied at the earliest possible opportunity with a copy of the note so made for correction or acceptance or otherwise. If the trial judge and counsel for all parties agree to the original or a corrected version then such agreed original or corrected version can properly be included in the record of appeal as part of the notes of evidence. Where no version can be so agreed, then in any application for leave to include the note made or taken by counsel at the trial, the affidavit in support of the application ought to set out the circumstances under which the note was made or taken and the steps taken to obtain the agreement of all concerned together with all correspondence relating to the attempt to obtain such agreement."

Case referred to:-

(1) *Baker* v. *Market Harborough Industrial Co-operative Society Ltd.* [1953] 1 W.L.R. 1472.

COURT OF APPEAL.

Ian S. Hill Q.C. (*G. S. Hill* with him) for the appellants.

H. E. Cashin for the respondents.

Wee Chong Jin C.J. (delivering the judgment of the court): A cyclist riding along Balestier Road, while being overtaken by a timber lorry 31' 4" long by 6' 8" wide, was knocked down by the lorry and sustained injuries which resulted in his death. The deceased's personal representatives sued the driver of the lorry for damages on behalf of the estate and for the benefit of the dependants.

At the trial of the action an eye-witness gave evidence that as the deceased cyclist was cycling along Balestier Road the defendant's lorry driven by the defendant in overtaking the cyclist knocked him down. This evidence was accepted by the trial judge and indeed was not denied by the defendant. The defendant said that he saw the cyclist ahead of him attempting to move towards the right, that he sounded his horn whereupon the cyclist turned back and held a straight course. He drove on, overtook the cyclist and after he had overtaken the cyclist he heard a bang, felt a jerk in the back portion of his lorry and applied his brakes. He said that the cyclist was travelling 11 or 12 feet from the edge of the road and he was driving his lorry on a straight course before and after overtaking the cyclist and that when overtaking the cyclist there was a gap of three or four feet between the cyclist and his lorry.

The trial judge disbelieved the defendant's evidence that he saw the cyclist attempting to make a right turn and that he overtook the cyclist with a three or four feet gap between them. He found that the defendant was negligent in that he either failed to observe the presence of the cyclist on the road or if he did he failed to give him a sufficiently wide berth. However, he held the cyclist partly to blame, to the